



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Four Penn Center – 1600 John F Kennedy Blvd
Philadelphia, Pennsylvania 19103-2852**

VIA ELECTRONIC MAIL
RETURN RECEIPT REQUESTED

ATTENTION:

Joe DiGiacomo Sr, Owner
Planet Granite, Inc.
415 Three Turn Road
Malvern, PA 19355
planetgraniteinc@aol.com

Request for Information under § 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)

The United States Environmental Protection Agency (“EPA” or “We”) hereby requires Planet Granite and any of its affiliates (“Planet Granite” or “you”),¹ to submit certain information as part of an EPA investigation to determine your compliance with Sections 203(a) and 213(d) of the Clean Air Act (“CAA”), 42 U.S.C. §§ 7522(a) and 7547(d), and the applicable motor vehicle and nonroad regulations at 40 C.F.R. Parts 85, 86, 89, 90, 1039, 1054 and 1068. Examples of vehicles or engines regulated under these Parts include, but are not limited to, automobiles and pickup trucks. Appendix A provides definitions. Appendix B provides instructions for your responses to this Request for Information. Appendix C specifies the information that you must submit.

Appendix A of this letter provides definitions for terms used in this Request for Information. Appendix B provides instructions for your responses to this Request. Appendix C specifies the information that you must provide in response to this Request. Appendix D contains language, which must accompany your response to this Request, attesting to the truth and completeness of your response. Appendix E provides information about asserting a claim of confidentiality over information you submit in response to this Request.

The EPA issues this Request for Information under Section 208(a) of the CAA, 42 U.S.C. § 7542(a). Under Section 208(a), the Administrator of the EPA may require any person who is subject to the CAA, Title II, Part A – Motor Vehicle Emission and Fuel Standards, Sections 202 – 219, 42 U.S.C. §§ 7521-7554, to perform tests and provide information necessary to determine whether the person is acting or has acted in compliance with the CAA and the regulations promulgated thereunder. The Administrator has delegated this authority to the undersigned Branch Chief, of the Enforcement and Compliance Assurance Division, Air, RCRA, and Toxics Branch, in EPA Region III.

In order for the EPA to determine whether a violation has occurred, you are hereby required,

¹ See definition 5 in Appendix A.

pursuant to Section 208(a) of the CAA, to provide responses to the questions and requests for information in Appendix C to this letter. Failure to provide the required information may result in the issuance of an Order requiring compliance with the requirements, or the initiation of a civil action pursuant to Section 113(b) of the Act, 42 U.S.C. Section 7413(b). In addition, Section 113(c)(2) of the Act provides that any person who knowingly makes any false material statement, representation, or certification in, or omits material information from any document required pursuant to this Act shall upon conviction be punished by a fine pursuant to Title 18 of the United States Code, or by imprisonment for not more than two years, or both. The information you provide may be used by EPA in administrative, civil, and criminal proceedings.

You must submit this information to the EPA representative listed below **within thirty (30) calendar days** from the date of this Request for Information. Please carefully review the instructions, definitions, and specific requests as you prepare your response. If you anticipate being unable to fully respond to this Request for Information by this date, you must contact Kim Laufenberg by telephone at (215) 814-2265 or by email at laufenberg.kim@epa.gov, within seven (7) days of the date of this Request for Information and, with an appropriate justification, request an extension of time to answer some or all of the requests below. If timely submitted, the EPA will review your request and may extend the time in which your response must be provided.

You may submit your response using one of the following options: A) via email to laufenberg.kim@epa.gov or B) by requesting a link from laufenberg.kim@epa.gov for a secure EPA file transfer site where you may upload your response. Please note, the EPA cannot receive compressed files (.zip) via email. If you wish to submit compressed files, please select option B above. If you prefer not to send documents that you have claimed as confidential business information (CBI) to the EPA by email, please send them as electronic files through the EPA's secure file transfer site (option B). Prior to submitting your response, please send an email to laufenberg.kim@epa.gov indicating which option you have selected to submit your response to this request.

Failure to provide all the requested information, and in the format requested, may result in additional inquiries, and may result in the initiation of a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b). It is important that your responses be clear, accurate, organized, and complete. We will regard any submitted information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA and/or criminal statutes.

You must submit all requested information under an authorized signature with the following certification (provided in Appendix D):

"I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341."

Finally, you are entitled to assert a business confidentiality claim covering all or part of the information you provide in response to this Request for Information, in accordance with the

procedures described in the Confidentiality of Business Information (“CBI”) regulations, 40 C.F.R. Part 2, Subpart B. However, no CBI claim may be made with respect to emissions data as defined at 40 C.F.R. § 2.301(a)(2). You must specify the page, paragraph, and sentence when identifying the information subject to your CBI claim. Appendix E of this Request for Information specifies the assertion and substantiation requirements for business confidentiality claims. The EPA may, without further notice, provide the public with any information not subject to a CBI claim.

This request is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks the collection of information from specific individuals or entities as part of an administrative action or investigation.

Please submit the requested information electronically within **30 calendar days of your receipt** of this letter. You may do so via email to Kim Laufenberg, Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency Region III, at laufenberg.kim@epa.gov. Please note that the EPA email server will allow attachments up to 20 MB. Alternatively, you may want to provide documents in response to this Request for Information by way of a secure file sharing site. Please let us know how you want to proceed.

Any questions concerning this Request for Information should be directed to Kim Laufenberg at (215) 814-2265 or by email at laufenberg.kim@epa.gov. Additionally, please visit the small business resources information sheet for assistance and information at <https://www.epa.gov/compliance/small-business-resources-information-sheet>.

Sincerely,

Jeanna R. Henry, Chief
U.S. Environmental Protection Agency, Region III
Enforcement and Compliance Assurance Division (3ED00)
Air, RCRA, and Toxics Branch

Enclosures: (5)

Appendix A: Definitions
Appendix B: Instructions for Responses
Appendix C: Request for Information
Appendix D: Statement of Certification
Appendix E: Confidential Business Information

cc: Susan Foster, PADEP, State Air Enforcement Director, sufoster@pa.gov

Appendix A

DEFINITIONS

1. All terms used in this Request for Information will have their ordinary meaning unless such terms are defined in the CAA, 42 U.S.C. §§ 7401 *et seq.*, or the Motor Vehicle and Non-Road Regulations found at 40 C.F.R. Parts 85, 86, 89, 90, 1039, 1054 and 1068.
2. The terms “document” and “documents” mean any object that records, stores, or presents information, and includes, without limitation, email, writings, memoranda, contracts, agreements, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these. If in computer format or memory, each such document shall be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy shall also include attachments to or enclosures with any document.
3. The term “entity” means any natural person, corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal group, organization, or association.
4. The term “person” includes an individual, corporation, partnership, or association. *See* Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
5. The terms “Planet Granite”, “you”, and “your” include, but are not limited to, the association of business entities operating under the names “Planet Granite”, and any parent organizations, affiliates, predecessors, successors, and assignee organizations.
6. The term “affiliate” means any organization or entity associated with you as an agent, parent organization, predecessor corporation, subsidiary organization, or any organization or entity acting in lieu of you or the entities named in Definition 5.
7. The term “sale” includes *all* sales (*e.g.*, sales made online through eBay or any other online sales platform, sales made in person, sales made in bulk to distributors, as well as mail order tunes provided to customers in association with the purchase of a tuner).
8. The term “motor vehicle” means any self-propelled vehicle designed for transporting persons or property on a street or highway. *See* Section 216 of the CAA, 42 U.S.C. § 7550(2).
9. The term “applications” means all vehicle or engine configurations.
10. The term “emission related parts” means those parts installed for the specific purpose of controlling emission or those components, systems, or elements of design which must

function properly to assure continued vehicle emission compliance as defined in 40 C.F.R. § 85.2102 and 40 C.F.R. Part 1068 Appendix I.

11. The term “element of design” means any control system (*e.g.*, computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine, as defined in 40 C.F.R. § 86.094-2.
12. The term “part or component” includes any part or component intended for use with, or as part of, any EPA-certified vehicle or engine (*e.g.*, electronic control module (“ECM”), element of design, tuner, tune, calibration map, or software that is installed on or designed for use in such vehicles or engines).
13. The term “electronic control module” or “ECM” means a device that receives inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. The ECM uses software programming including calculations and tables of information to provide the appropriate outputs. ECM can be a generic term but may refer specifically to the engine control module when discussing emission controls on vehicles and engines. Other ECMs may be incorporated separately with multiple units used to control various engine, vehicle, or equipment functions. Examples of electronic control modules include, but are not limited to, Engine Control Module, OBD Control Modules, Powertrain Control Module (“PCM”), Transmission Control Module (“TCM”), Body Control Module (“BCM”), and after-treatment control module. Any or all of these modules may be combined into a single unit.
14. The term “engine tuner” or “tuner” means any device or product capable of accessing, altering, or replacing the software programming, calculations, computer logic, tables of information (*e.g.*, fuel timing maps), coding, or other content or information stored within or used by an electronic control module.
15. The term “engine tune” or “tune” means any combination of software programming, calculations, computer logic, tables of information (*e.g.*, fuel timing maps), coding, or other content or information, stored in any form, capable of affecting or controlling an electronic control module.
16. The term “selective catalytic reduction” or “SCR” includes systems that inject a reductant, such as diesel exhaust fluid (“DEF”), into the exhaust stream where it reacts with a catalyst to convert nitrogen oxides (“NO_x”) emissions to nitrogen gas (“N₂”) and water (“H₂O”).
17. The term “onboard diagnostics” or “OBD” includes systems that monitor components that can affect the emission performance of the vehicle to ensure that the vehicle remains as clean as possible over its entire life and assists repair technicians in diagnosing and fixing problems with the computerized engine controls. If a problem is detected, the OBD

system illuminates a warning lamp on the vehicle instrument panel to alert the driver.

18. The term “exhaust gas recirculation” or “EGR” includes systems that direct, usually by use of a valve, a portion of engine exhaust back into the engine’s combustion chamber in order to control combustion temperatures and pressures, thereby reducing the production of NO_x. The EGR system may include a cooler that cools the recirculated exhaust.
19. The term “Diesel Particulate Filter” or “DPF” refers to an exhaust after-treatment device that physically traps particulate matter (“PM”) and removes it from the exhaust stream of diesel fueled vehicles and equipment, typically using a porous ceramic or cordierite substrate or metallic filter.
20. The term “Engine Derate” or “Limp-Home Mode” means an electronic control module mode that reduces the engine power after the On-Board Diagnostic system identifies a problem with the emission control equipment.
21. The term “catalysts” includes systems that contain parts or chemical elements that increase the rate of a chemical reaction but are not one of the original reactants or final products, i.e., are not consumed or altered in the reaction. Catalysts consist of a flow-through structure that is coated with an active metal catalyst and surrounded by a stainless-steel housing.

Appendix B

INSTRUCTIONS FOR RESPONSES

1. Provide a complete, detailed response to each of the requests in Appendix C in electronic form. All responsive documents and materials (*e.g.*, copies of print media, audio, and visual material) must be provided as an accurate and legible copy in searchable format, and number stamped in sequential order (*e.g.*, Bates stamped) to permit identification using unique references. Where spreadsheets are responsive to a request, produce them in unlocked electronic spreadsheet format, such as .xls or .csv (locked spreadsheets, .pdf files, and images are unacceptable). Please contact Kim Laufenberg at (215) 814-2265 or laufenberg.kim@epa.gov, if providing the responses in this format will be an issue.
2. Please provide the Statement(s) of Certification (Appendix D) with your response.
3. This Request for Information is a continuing request. You must promptly supplement your response to any request in Appendix C in the event you learn that you possess responsive information not yet produced or if you gain possession, custody, or control of responsive information after initially responding to this Request for Information.
4. For each answer, please provide the number of the request to which it responds and identify each person who provided information that was used to prepare that answer. For each document produced, please provide the number of the request to which it responds. Where information is responsive to more than one numbered request, provide that information only once, but indicate on the responsive material the numbers of all requests to which the information is responsive.
5. When a response includes a quantity with units of measure, specify the units of measure.
6. Where documents or information necessary for a response are not in your possession, custody, or control, indicate in your response why such documents or information are not available or in your possession, custody, or control, and identify any source that either possesses or is likely to possess such information.
7. All submitted documents should be copies and not original documents.
8. Where you have previously submitted information to the EPA that is also the subject of these requests, re-submit that information in accordance with these instructions (Appendix B). Identify the material that was previously provided, the date on which it was provided, how the information was provided (*e.g.*, electronically, fax, mail), and the individual at EPA to whom it was provided.
9. Where a person at an entity other than Planet Granite is responsible for a response to a request in Appendix C, clearly indicate in your response which entity is providing the

response, as well as the person.

Appendix C

REQUEST FOR INFORMATION

Planet Granite shall submit the following information to the EPA, pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, regarding certain parts or components that you either manufactured (*i.e.*, created, wrote, programmed, fabricated, produced, or modified), offered for sale, sold, or installed since January 1, 2019.

1. In an electronic, unlocked spreadsheet, identify each part or component manufactured, offered for sale, sold, or installed by Planet Granite or on behalf of Planet Granite including, but not limited to, engine parts, power packages, computer tuning, calibration, element of design, tuner, tunes, software coding, or device, which:
 - a. Changes, affects, modifies, bypasses, or allows for the deletion or partial deletion of a vehicle's emission related parts including, but not limited to, the following systems:
 - i. diesel particulate filter system ("DPF");
 - ii. exhaust gas recirculation system ("EGR");
 - iii. catalytic converter system ("catalyst");
 - iv. on-board diagnostic system ("OBD");
 - v. selective catalytic reduction system ("SCR"); or
 - vi. sensors, signals, or records related to the DPF, EGR, catalyst, OBD, or SCR.
 - b. Simulates the operation of any emission related parts including, but not limited to, the DPF, EGR, catalyst, OBD, SCR, or sensors, signals, or records related to these systems;
 - c. Can be programed to modify engine operating or emission control parameters or OBD functions including, but not limited to, those parameters sensed or controlled by the electronic control module ("ECM"); or
 - d. Has the effect of permanently or temporarily changing, affecting, bypassing, defeating, or rendering inoperative any emission control device, element of design, or emission related part.
2. In an electronic, unlocked spreadsheet, for each part or component that is identified in response to Request 1, answer "Yes" or "No" to the following questions:
 - a. Whether the part or component changes, affects, modifies, bypasses, renders inoperative, or allows for the deletion or partial deletion of a vehicle's DPF.
 - b. Whether the part or component changes, affects, modifies, bypasses, renders

inoperative, or allows for the deletion or partial deletion of a vehicle's EGR.

- c. Whether the part or component changes, affects, modifies, bypasses, renders inoperative, or allows for the deletion or partial deletion of a vehicle's catalyst.
- d. Whether the part or component changes, affects, modifies, bypasses, renders inoperative, or allows for the deletion or partial deletion of a vehicle's OBD.
- e. Whether the part or component changes, affects, modifies, bypasses, renders inoperative, or allows for the deletion or partial deletion of a vehicle's SCR.
- f. Whether the part or component changes, affects, modifies, bypasses, renders inoperative, or allows for the deletion or partial deletion of sensors, signals, or records related to the DPF, EGR, catalyst, OBD, or SCR.
- g. Whether the part or component simulates the operation of any emission related parts including, but not limited to, the DPF, EGR, catalyst, OBD, SCR, or sensors, signals, or records related to these systems;
- h. Whether the part or component can be programed to modify engine operating or emission control parameters or OBD functions including, but not limited to, those parameters sensed or controlled by the ECM;
- i. Whether the part or component has the effect of permanently or temporarily changing, affecting, bypassing, defeating, or rendering inoperative any emission control device, element of design, or emission related part;
- j. Whether the part or component is capable of disabling or allowing the removal of the EGR without illuminating a Malfunction Indicator Light ("MIL") or setting any on-board Diagnostic Trouble Code ("DTC");
- k. Whether the product is capable of allowing removal of a DPF without illuminating a MIL or setting any DTC;
- l. Whether the product is capable of allowing removal of a DPF without any engine derating;
- m. Whether the product is capable of allowing removal of a Diesel Oxidation Catalyst without illuminating a MIL or prompting any DTC;
- n. Whether the product is capable of allowing removal of a Diesel Oxidation Catalyst without any engine derating;
- o. Whether the product is capable of allowing removal of a SCR system without

illuminating a MIL or setting any DTC;

- p. Whether the product is capable of allowing removal of a SCR system without any engine derating;
 - q. Whether the product is capable of altering any fuel specification including, but not limited to, fuel timing, duration, and mass; and
 - r. Whether the product is capable of bypassing or altering parameters to prevent DTCs or MILs from being recorded or illuminated.
3. In an electronic, unlocked spreadsheet, for each part or component identified in Requests 1 and 2 above, provide the following information:
- a. The name and address of the manufacturer of each part or component;
 - b. The part number or component part number and the identifying name, and the manufacturer's or supplier's part number or component part number and identifying name;
 - c. The vehicle applications by make, model, fuel type (gasoline or diesel), engine size (in liters), transmission type, and model year;
 - d. A detailed description of what the part or component does and how it operates;
 - e. If the part or component is or comprises of a tuner, indicate whether it is sold with pre-loaded tunes, and provide a narrative description of each tune;
 - f. The average per-unit cost of the part (in dollars);
 - g. The average per-unit sales price of the part (in dollars);
 - h. The specific dates, between January 1, 2019 and the present, that the part or component was manufactured by you, and the quantity that was manufactured by you, by date;
 - i. The specific dates, between January 1, 2019 and the present, that the part or component was sold or offered for sale by you, and the quantity that was sold or offered for sale by you, by date;
 - j. The specific dates, between January 1, 2019 and the present, that the part or component was installed by you, and the quantity that was installed by you, by date;

- k. The specific dates, between January 1, 2019 and the present, that the part or component was installed on your behalf, the name and address of the person or company that performed the installation, and the quantity that was installed, by date;
 - l. The quantity currently in inventory at Planet Granite; and
 - m. The records of any emissions testing or reports regarding any effect on vehicle emissions.
4. For any tests identified in response to Request 3(m) above, provide the following information:
- a. A description of the test, including identification of the component and vehicle, the EPA engine family, name of the vehicle, test equipment, test protocols, and calibration procedures;
 - b. A sample test report and any training or instructional materials used for educating employees and affiliated persons about how to perform the test; and
 - c. The date and location of the test, the name and position of the person that conducted the test, and the test results.
5. For each part or component identified in Requests 1 through 3 above, provide the following:
- a. Copies of your advertisements to sell, distribute, or install each part or component, including advertisements on websites and in other media;
 - b. Copies of receipts or invoices for all parts or components manufactured by you in addition to operation instructions, guides, or manuals; and
 - c. Copies of receipts or invoices for all parts or components sold by you.
6. Identify the name, address, contact person, and phone number of each company or entity to which Planet Granite provided an invoice or receipt in response to Request 5(c) & 5(d).
7. Identify the name, address, contact person, and phone number of each company or entity from which Planet Granite purchased a part or component identified in Requests 1 through 3 above or on whose behalf Planet Granite sold or distributed a part or component identified in Requests 1 through 3 above.
8. For parts or components that are identified in response to Requests 1 through 3 above, state whether you or the manufacturer submitted an application for an Executive Order to

the California Air Resources Board and provide a copy of the application for each part or component. State whether each component received an Executive Order exempting the component from California's emission control system anti-tampering law, California Vehicle Code § 27156. If the component received an Executive Order, provide the Executive Order number and state whether the California Air Resources Board required the manufacturer to change the component or application in order to receive approval.

9. Provide the name and address of each location where you have stored and are currently storing any parts or components identified in response to Requests 1 through 3.
10. Provide a complete, unedited copy of every work order, service order, final bill, and any documentation for every vehicle serviced since January 1, 2019, upon which any part identified in Request 2 was installed.
11. Provide the name and address of each location where you have stored and are currently storing any of the records identified in response to Requests 5 and 10.
12. If you do not have any of the copies of any of the documents requested in Request 10, above, indicate for each instance why you do not have them.
13. Provide the name and address of each location where you have stored and are currently storing any of the Planet Granite fleet vehicles in addition to providing the vehicle's:
 - a. Make and model,
 - b. Fuel type (gasoline or diesel),
 - c. Engine size (in liters),
 - d. Transmission type, and
 - e. Model year.
14. Copies of invoices for all work performed by Planet Granite from January 1, 2019, through the date of this Information Request, including work involving removal of emission-related parts or the installation of any emissions-related product, if applicable.
15. Identify each individual responsible for responding to this Request for Information, including his/her title(s), the request(s) to which each individual responded, and the period of time for which each individual is providing a response.
16. Provide a list of all entities that are affiliated with Planet Granite including their addresses and telephone numbers. Describe the business relationships between all entities and provide copies of all agreements with those entities. Include a description of both formal and informal agreements, financial inter-relationships, overlap of officers and directors, and any business practices that exist between these entities. For each entity identified, list any and all name variations or business aliases used. Provide a corporate organizational

chart showing all of Planet Granite's affiliates.

17. For Planet Granite and each of the entities described in response to Request No. 16, provide certificates of good standing, articles of incorporation, by-laws, and partnership or membership agreements, as applicable.
18. For Planet Granite and each of the entities described in response to Request No. 16, provide a list of each entity's officers, directors, shareholders, members, managers, and partners, as applicable.
19. For Planet Granite and each of the entities described in response to Request No. 16, provide the entity's net worth or net assets, and annual sales revenue.
20. For Planet Granite and each of the entities described in response to Request No. 16, provide the address(es) of any location(s), from January 1, 2019 to present, where the entities have operated.
21. If corporate changes occurred between January 1, 2019, and the present, including but not limited to changes related to acquisitions, reorganizations, or mergers, describe such changes in narrative form.

Appendix D

STATEMENT OF CERTIFICATION

This Certification is for signature by the president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or another executive with authority to perform similar policy or decision-making functions of the corporation.

2265 is submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") request for information, issued pursuant to Section 208(a) of the Clean Air Act, to determine whether the facility is in compliance with the Clean Air Act.

I certify that I am fully authorized by 2265 to provide the above information on its behalf to EPA.

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____

Appendix E

CONFIDENTIAL BUSINESS INFORMATION

You may assert a business confidentiality claim covering all or part of the information you provide in response to this information request for any business information entitled to confidential treatment under section 114(c) of the Clean Air Act (the Act), 42 U.S.C. § 7414(c), and 40 C.F.R. Part 2, Subpart B (which governs treatment of CBI under both the CAA and RCRA). Under section 114(c) of the Act, you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, Subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in section 114(c) of the Act and 40 C.F.R. §§ 2.201-2.311. **If you fail to furnish a business confidentiality claim with your response to this information request, the EPA will construe your failure as a waiver of that claim, and the information may be made available to the public without further notice to you.** See 40 C.F.R. § 2.203(c).

Pursuant to Section 114 of the Act and 40 C.F.R. § 2.301(h), the EPA possesses the authority to disclose to any authorized representative of the United States information which might otherwise be entitled to confidential treatment. In order to assist in its review and analysis, and in accordance with the requirements of 40 C.F.R. § 2.301(h)(2), the EPA may disclose information provided in response to this and other information requests to any person under contract or subcontract to the United States government to perform work in support of EPA in connection with the Act or regulations which implement the Act. In accordance with the requirements of 40 C.F.R. § 2.301(h)(3), the EPA may also disclose such information to State and/or local governmental agencies which have duties or responsibilities under the Act, or under regulations which implement the Act.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response to this information request.

Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying the information subject to your claim. Where your claim, as originally made or as modified by your response to this letter, does not include all information on a page, please attach a copy of each such page with brackets around the text that you claim to be CBI. Please note that if a page, document, group, or class of documents claimed by you to be CBI contains a significant amount of information which our Office of Regional Counsel determines is not CBI,

your CBI claim regarding that page, document, group, or class of documents may be denied. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event. All confidentiality claims are subject to EPA verification. If the EPA reviews your CBI claim(s) then the EPA may send notice to your business and ask you to submit additional information to substantiate the CBI claim(s). *See* 40 C.F.R. § 2.204(e).

The criteria the EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. § 2.208(a)-(d), as well as the U.S. Supreme Court’s decision in *Food Marketing Institute v. Argus Leader Media* (*Argus*), 139 S. Ct. 2356 (2019), which evaluated the definition of “confidential” as used in Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552. In the *Argus* decision, the Court held that at least where “[1] commercial or financial information is both customarily and actually treated as private by its owner and [2] provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4.” *Argus*, 139 S. Ct. at 2366.

Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. *See* 42 U.S.C. § 7414(c); 40 C.F.R. § 2.301(e).